

REMARKS

In the 5 October 2006 *Office Action*, the Examiner rejects all pending claims, Claims 1-53. Applicant thanks the Examiner with appreciation for the careful consideration and examination of the Application. In response to the *Office Action*, Applicant provides the below remarks and above presented clarifying amendments. No new matter is believed to be added by this submission. Indeed, the claim amendments are fully supported by at least Paragraphs 46-49, 90, and 95-103 of Applicant's *Specification* (as Published in USPGPUB 2003/0093483).

Applicant submits this response solely to facilitate prosecution and Applicant reserves the right to present new or additional claims in this Application that have similar or broader scope as originally filed. Applicant also reserves the right to present additional claims in a later-filed continuation application that have similar or broader scope as originally filed. Accordingly, any amendment, argument, or claim cancellation presented during prosecution is not to be construed as abandonment or disclaimer of subject matter.

After entry of this Response, Claims 1-53 are pending in the Application. Applicant respectfully asserts that the pending claims are in condition for allowance over the references of record and respectfully requests reconsideration of the claims in light of this submission. Applicant, accordingly, believes that the Application is allowable for the following reasons.

I. The Pending Claims Are Allowable

As the Examiner will recall, Applicant's invention is generally directed to systems and methods to transmit pollution information over a wireless network. According to certain embodiments, Applicant's invention transmits pollution information through one or more transceivers coupled to a pollution detector configured to detect pollution to originate pollution information messages. Herein, Applicant clarifies the independent claims to recite that a pollution information message can comprise pollution detector information including at least one of pollution detector type, detected pollution levels, and pollution detector operational status (see claims for exact language). In contrast, the references of record fail to teach or suggest such features.

Applicant also clarifies the independent claims to reflect that Applicant's currently claimed invention is a "smart" communication system. Indeed, communication paths are advantageously chosen (or selected or defined) such that Applicant's transceivers can

communicate with specific other network components via pre-selected paths (see claims for exact language). In contrast, the references of record, at best, teach a “shot-gun” approach that complicates and decreases system performance. Thus, the references of record fail to teach or suggest Applicant’s claimed communication path features as discussed in greater detail below.

II. Claims 1-53 Are Allowable In Accordance With 35 U.S.C. § 103(a)

The Examiner rejects pending Claims 1-53 under 35 U.S.C. § 103(a). More specifically, the Examiner rejects the pending claims due to a combination of *Salvo* (USPN 6,356,205) and *Hassan* (USPN 5,481,532). Applicant respectfully traverses the § 103 rejection and asserts that Claims 1-53 are allowable over *Salvo-Hassan* combination in light of the current clarifying amendments for at least several reasons.

First, as mentioned above, Applicant has clarified the current independent claims to recite that a pollution information message comprises certain data fields. These fields can include pollution detector type, detected pollution levels, and pollution detector operational status (see claims for exact language). Neither *Salvo* nor *Hassan* teaches or suggest such features. The Examiner cites certain portions of *Hassan* when rejecting dependent Claim 11 (which claims subject matter similar to the newly presented subject matter), but *Hassan* does not teach or suggest the new claimed subject matter or that claimed in Claim 11. Rather, *Hassan* only teaches a message packet field that does not contain any specific pollution information. (*Hassan*, Col. 3, Lines 45-67). Likewise, *Salvo* fails to teach or fairly suggest transmitting the specific pollution-orientated information that Applicant now claims. Due to these deficiencies of the applied *Salvo-Hassan* combination, Claims 1-53 are patentable for at least this reason.

Second, Applicant’s independent Claims now recite that communication paths are selected (or chosen or defined) to avoid problems associated with a “shot-gun” style communication system. For example, as recited in Claim 1, Applicant’s claims now include a pollution monitoring management controller comprising logic to determine a communication path for at least one of the plurality of network transceivers (see claim for exact language). Neither *Salvo* or *Hassan* teach or suggest such a feature. Indeed, *Salvo*’s system only teaches communication of groundwater data between a communications unit (19) and a data collection center (20). Thus, *Salvo* teaches no logic to select a communication path because the data is not transmitted to any intermediary components.

Similarly, *Hassan* fails to cure *Salvo*'s deficiencies. Indeed, *Hassan* teaches a "shot-gun style" transmission system. Or, as *Hassan* states: "message packets are broadcast to all transceivers capable of receiving the data transmission." (*Hassan*, Col. 5, Lines 23-24). As such, *Hassan*'s "shot-gun" communication scheme does not select communication paths for transceivers as Applicant now claims. Applicant, thus, respectfully asserts that the *Salvo-Hassan* combination does not teach or fairly suggest this feature and in light of this deficiency, Applicant's claims are allowable over the combination.

Third, Applicant also respectfully asserts that Applicant's claimed invention is patentable over the cited combination for additional reasons. Indeed, the cited combination do not teach or suggest the subject matter of Claims 10, 11, 39, 40, and 42. For example, the cited combination does not teach or suggest the "step of determining a person to be contacted by associating information in a database regarding the person with the identification code of the transceiver" feature of Claim 39 or the related features of Claims 40 and 42. Likewise, the cited combination fails to teach or fairly suggest the features expressly recited in Claims 10 and 11. Given that the *Office Action* is silent as to these advantageous claimed features, Claims 10, 11, 39, 40, and 42 are in condition for immediate allowance. Applicant, thus, respectfully asserts that Claims 10, 11, 39, 40, and 42 are also allowable over the *Salvo-Hassan* combination.

Finally, there are still yet other reasons why Applicant's claimed invention is patentable over the cited combination. As MPEP § 2143 provides, a *prima facie* case of obviousness requires three findings. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Lastly, the prior art references, when combined, must teach or suggest all the claim limitations as a whole as required by 35 U.S.C. § 103. *See* MPEP § 2142 & § 2143.

Applicant respectfully submits that the cited combination teaches away from Applicant's claimed invention and thus can not substantiate the § 103 rejection. Indeed, *Salvo* fails to teach or suggest using multiple transceivers associated with pollution detectors in a communication path or select a communication path via the multiple transceivers. Similarly, *Hassan*'s "shot-gun" style approach in which "message packets are broadcast to all transceivers capable of receiving the data transmission" teach away from Applicant's claimed invention due to the problems associated with such a communication system. (*Hassan*, Col. 5, Lines 23-24). Indeed,

Hassan acknowledges a problem of his system that information delivery time is “highly variable.” Further, *Hassan*’s “shot-gun” system uses overhead data that requires continued check of ACKs and message lift time to ensure a transmitted message has been properly received. (*Hassan*, Col. 4, Lines 1-67).

Moreover, the alleged motivation to combine *Salvo & Hassan* appears not to come from any reference, the nature of the problem to be solved, or the knowledge of persons of ordinary skill in the art. Rather, the alleged motivation to combine *Salvo & Hassan* appears to result from impermissible hindsight or an obvious to try rationale, both of which are not permitted. *See* MPEP § 2145, Section X (A & B). The Examiner also provides no reasonable expectation of success that Applicant’s claimed invention would result from the *Fraser-Hyman* combination. This element of a *prima facie* case of obviousness is expressly required by MPEP § 2143.02.

Accordingly, for at least the above reasons, Applicant respectfully asserts that pending Claims 1-53 are patentable over the *Salvo-Hassan* combination. Applicant specifically asserts that the combination of *Salvo* and *Hassan* fail to support a *prima facie* case of obviousness and fail to satisfy the requirements of § 103(a) especially in light of Applicant’s clarifying amendments. Accordingly, Applicant believes that all pending claims are allowable. Withdrawal of the § 103 rejection is, thus, respectfully requested.

III. Information Disclosure Statement Submission

In further compliance with Applicant’s continuing duty under 37 C.F.R. § 1.56 to disclose to the United States Patent and Trademark Office any information that may be material to patentability of the above-identified invention, enclosed please find form PTO/SB/08A listing references presently known to Applicant. These references were discovered during the course of prosecution in co-pending applications: (a) 09/925,270; (b) 10/000,477; and (c) 11/119,054. Applicant submits the enclosed references using an electronic information disclosure form for the Examiner’s convenience.

The submission of this information shall not be deemed an admission that this information is necessarily material to the patentability of the above-identified invention. Also, the submission of this information shall not be construed as a representation that a search has been made. *See* 37 CFR 1.97 (g)-(h). To ensure that the references are reviewed, Applicant submits the \$180 fee via the EFS-Web electronic filing system.

IV. Notice of Change of Entity Status

In accordance with MPEP § 509.03, the current owner of this application notifies the United States Patent and Trademark Office that this application no longer qualifies for small entity status. Accordingly, pursuant to 37 C.F.R. § 1.27(g)(2), it is respectfully requested that small entity status be withdrawn for this application.

In further accordance with MPEP § 509.03, Applicant respectfully asserts that it can continue paying small entity fees in this application as stated in 37 C.F.R. § 1.27(g)(1). Indeed, this USPTO regulation states: “Once status as a small entity has been established in an application or patent, fees as a small entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due.” 37 C.F.R. § 1.27(g)(1) (emphasis added); *see also Daimlerchrysler AG v. Feuling Advanced Techs., Inc.*, 276 F. Supp. 2d 1054, 1060-61 (S.D. Cal. 2003). In adherence to and depending upon this USPTO regulation, Applicant will continue to pay small entity fee even though entity status has changed until an issue fee becomes due in this application. *Id*; *see also* MPEP § 509.03 (Section VII. Removal Of Status).

V. Fees & Express Petition Pursuant To 37 C.F.R. § 1.136

Applicants submits this *Response* within six months of the 5 October 2006 *Office Action* and with no additional claims. Accordingly, Applicant respectfully petitions for a three-month extension pursuant to 37 C.F.R. § 1.136 and the undersigned submits the appropriate extension fee via EFS-Web. The undersigned also submits an IDS fee for the enclosed electronic IDS.

Other than the fees mentioned above, Applicant believes that no additional fees are due. The Commissioner is authorized, however, to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 20-1507 for full acceptance of this submission.

VI. Conclusion

This *Response* is believed to be a complete response to the 5 October 2006 *Office Action*. Applicant respectfully asserts that all pending claims are in condition for allowance and respectfully request passing of this case in due course of patent office business. If the Examiner believes there are other issues that can be resolved by a telephone interview, or there are any informalities remaining in the application which may be corrected by an Examiner's amendment, a telephone call to Hunter Yancey at (404) 885-3696 is respectfully requested.

Respectfully submitted,

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